MESSRS TAI CHOI YU & CO., ADVOCATES v. THE COURT OF APPEAL OF MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
IDRUS HARUN JCA
MARY LIM JCA
[CIVIL APPEAL NO: Q-01(IM)(NCVC)-110-04-2016]
8 MARCH 2017

CONSTITUTIONAL LAW: *Attorney General – Representation – Appeal against High Court's decision in dismissing application to strike out memorandum of appearance filed by Senior Federal Counsel – Civil suit against Court of Appeal judges – Whether judges sued in personal or official capacity – Whether Attorney General under mandatory duty to provide legal representation for judges sued in course of performing duties – Whether Parliament prohibited from discussing conduct of judge without first fulfilling requirement of art. 127 of Federal Constitution – Whether Attorney General has wide ranging powers embedded in art. 145 of Federal Constitution to uphold sanctity of institution of justice*

CONSTITUTIONAL LAW: *Attorney General – Representation – Civil suit against Court of Appeal judges – Appeal against decision of High Court dismissing application to strike out memorandum of appearance filed by Senior Federal Counsel – Preliminary objection raised – Whether Court of Appeal has jurisdiction to hear appeal – Whether Court of Appeal has constitutional duty to hear and decide on appeal before it – Whether appellant had submitted himself to jurisdiction of this court – Whether preliminary issue dismissed*

This was an appeal by a firm of solicitors ('appellant') against the decision of the High Court in dismissing the appellant's application to strike out the memorandum of appearance filed by the Senior Federal Counsel ('SFC') of the Federal Attorney General Chamber's on behalf of the Court of Appeal ('first respondent'), the Chairman of the Court of Appeal ('second respondent') and a member of the three presiding judges in the Court of Appeal ('third respondent'). The appellant filed a civil action ('2013 Action') seeking for a sum of RM995,517,49 being remuneration for legal work and services rendered against one Ting Sie Chung. The defendant filed an application to strike out the 2013 action which was dismissed. The defendant in the 2013 action then appealed to the Court of Appeal in a 2014 Appeal ('2014' Appeal'). The first respondent overturned the decision of the High Court and struck out the 2013 action. The appellant, however, maintained that the Court of Appeal should have ordered for the 2013 action to be reinstated and be remitted back to the High Court for a hearing on its merits. The appellant proceeded to apply for leave in order to lodge an

appeal against the said decision at the Federal Court, which was subsequently dismissed. It was the appellant's contention that his failure in obtaining leave was contributed by the fact that there were no written grounds of decision from the first respondent to support the appellant's application for leave. As a result, the appellant filed a civil action against the respondents, claiming for, *inter alia,* an order that the 2013 action be reinstated and to be reverted back to the High Court for hearing on its merits. The writ of summons was served on all the three respondents directly addressed at the Istana Kehakiman Putrajaya and not served on the Attorney General's Chambers. It was the appellant's stand that the action instituted by him was not a civil action against the Government and the Government Proceedings Act 1956 had no application. The SFC entered appearance and filed a memorandum of appearance on behalf of all the three respondents. The appellant then *vide* High Court encl. 6 and pursuant to O. 18 r. 19 filed an application to, *inter alia,* set aside the memorandum of appearance filed by the SFC. The High Court Judge dismissed encl. 6. Hence, the appellant appealed. The issues that arose were (i) whether this Court of Appeal could hear this appeal; and (ii) whether the respondents could be represented by the Federal Counsel of the Federal Attorney General's Chambers.

Held (dismissing appeal with costs)
Per Rohana Yusuf JCA delivering the judgment of the court:

(1) The appellant raised a preliminary objection that the Court of Appeal had no jurisdiction to sit and hear this appeal. However, it was the appellant himself who lodged the appeal to this court, and it is this court's constitutional duty to hear and decide on the appeal before it. The appellant had submitted himself to the jurisdiction of this court. Therefore, he could not raise issue questioning its jurisdiction. The preliminary issue was therefore dismissed. (paras 12 & 13)

(2) The civil action herein is a civil action by the appellant made against the respondents and it pertained to the respondents' discharge of their duties and functions as the Court of Appeal, where the second respondent and third respondent sat as the adjudicating members. The fact that the second and third respondents were named in their personal names did not *ipso facto* make it a personal action against them. The Court of Appeal had presided over the 2014 Appeal in the course of its constitutional duties and functions, where the second and third respondents were sitting as the panel members together with another panel member. It was difficult to appreciate the stand taken by the appellant that the second and third respondents were not sued in their official capacities. (paras 16 & 17)

(3) The first respondent was constituted under art.121(1A) of the Federal Constitution. The jurisdiction of the Court of Appeal as stated in the Courts of Judicature Act 1964, amongst others, is to determine appeals from decisions of the High Court and such other jurisdiction conferred under Federal laws. It is in that capacity too that the first respondent is being sued. (para 18)

(4) The Attorney General is under a mandatory duty to provide legal representation in order to defend and protect the office and the institution for the administration of justice in this country. Being an officer established under the Federal Constitution, the Attorney General must step in defence of judges sued in the course of performing their duties as in this case, in the protection of the institution of the judiciary and in the interest of administration of justice. (paras 20 & 21)

(5) The appellant had submitted that the suit was not one against a public officer as the second and third respondent were not public officers by virtue of the fact that the "Government of Malaysia has no power or jurisdiction to sack them and the judiciary also has no power and jurisdiction to sack them: they can only be sacked by Parliament." The second and third respondents were appointed under art. 122B of the Federal Constitution by the Yang di-Pertuan Agong. These respondents were judges of the Court of Appeal. The only provision that says anything about Parliament in Part IX of the Federal Constitution is that of art. 127, which restricts Parliament from discussing the conduct of a judge except on a substantive motion of which proper notice must be given to the House. Hence, the Federal Constitution prohibits Parliament from simply discussing the conduct of a judge without first fulfilling the requirement of art. 127. Not only was the appellant's statement totally absurd, but it went against the main thrust of the appellant's case in upholding the doctrine of separation of powers. Thus, the averment by the appellant that Parliament can remove a judge would not only be wrong in law but it would also go against the bone of contention propounded by the appellant in objecting to the representation by the Attorney General in this case. (paras 25 & 26)

(6) The Attorney General was representing the respondents under his wide ranging powers embedded in art. 145 to uphold the sanctity of the institution of justice. The wide ranging powers of the Attorney General under art. 145 of the Federal Constitution necessarily includes the power to represent not only the Government but also any body or person performing any function under the Constitution. Clearly this was one of such case. The grounds raised by the appellant in this appeal were devoid of any merit. (para 27)

***Bahasa Malaysia** Headnotes*

Ini adalah rayuan oleh sebuah firma peguam ('perayu') terhadap keputusan Mahkamah Tinggi yang menolak permohonan perayu untuk membatalkan memorandum kehadiran yang difailkan oleh Peguam Kanan Persekutuan ('PKP') dari Jabatan Peguam Negara bagi pihak Mahkamah Rayuan ('responden pertama'), Pengerusi Panel Mahkamah Rayuan ('responden kedua') dan seorang ahli dari tiga hakim yang bersidang dalam Mahkamah Rayuan ('responden ketiga'.) Perayu telah memfailkan satu tindakan sivil ('tindakan 2013') menuntut jumlah RM995,517,49 sebagai ganjaran untuk perkhidmatan undang-undang yang diberikan terhadap satu Ting Sie Chung. Defendan memfailkan permohonan untuk membatalkan tindakan 2013 yang kemudiannya ditolak. Defendan dalam tindakan 2013 memfailkan rayuan ke Mahkamah Rayuan dalam Rayuan 2014 ('Rayuan 2014'). Responden pertama membatalkan keputusan Mahkamah Tinggi dan menolak tindakan 2013. Perayu, walau bagaimanapun, menghujahkan Mahkamah Rayuan harus memerintahkan supaya tindakan 2013 dikembalikan ke Mahkamah Tinggi untuk perbicaraan atas merit. Perayu memohon kebenaran untuk membuat satu rayuan terhadap keputusan tersebut di Mahkamah Persekutuan, yang kemudiannya ditolak. Perayu menghujahkan bahawa kegagalannya untuk memperoleh kebenaran tersebut disumbang oleh fakta tiada penghakiman bertulis daripada responden pertama untuk menyokong permohonan perayu untuk kebenaran. Akibatnya, perayu memfailkan tindakan sivil terhadap responden-responden memohon, antara lain, perintah bahawa tindakan 2013 dipulihkan dan dikembalikan ke Mahkamah Tinggi untuk dibicarakan atas merit. Writ saman diserahkan kepada ketiga-tiga responden dialamatkan di Istana Kehakiman Putrajaya dan tidak diserahkan kepada Jabatan Peguam Negara. Pendirian perayu adalah bahawa tindakan yang dimulakan olehnya bukan tindakan sivil terhadap Kerajaan dan Akta Prosiding Kerajaan 1956 tidak terpakai. PKP memasuki kehadiran dan memfailkan memorandum kehadiran bagi pihak ketiga-tiga responden. Perayu kemudiannya melalui Mahkamah Tinggi lampiran 6 dan menurut A. 18 k. 19 memfailkan permohonan untuk, antara lain, mengetepikan memorandum kehadiran yang difailkan oleh PKP. Hakim Mahkamah Tinggi menolak lampiran 6. Oleh itu, perayu merayu. Isu-isu yang dibangkitkan adalah (i) sama ada Mahkamah Rayuan ini boleh mendengar rayuan ini; dan (ii) sama ada responden-responden boleh diwakili oleh peguam dari Jabatan Peguam Negara.

Diputuskan (menolak rayuan perayu dengan kos)
Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:

(1) Perayu membangkitkan bantahan awalan bahawa Mahkamah Rayuan tidak mempunyai bidang kuasa untuk bersidang dan mendengar rayuan ini. Walau bagaimanapun, perayu sendiri yang telah mengemukakan rayuan ke mahkamah ini, dan adalah tanggungjawab perlembagaan

A mahkamah ini untuk mendengar dan memutuskan rayuan yang dikemukakan. Perayu telah menyerahkan dirinya ke bidang kuasa mahkamah ini. Dengan itu, perayu tidak boleh mempersoalkan bidang kuasa mahkamah ini. Isu bantahan awalan oleh itu ditolak.

(2) Tindakan sivil di sini adalah tindakan sivil oleh perayu dibuat terhadap
B responden-responden dan ia berkaitan pelupusan tugas dan fungsi responden-responden sebagai Mahkamah Rayuan, di mana responden kedua dan ketiga bersidang sebagai hakim-hakim. Fakta bahawa responden kedua dan ketiga dinamakan dalam nama peribadi mereka menjadikannya tidak *ipso facto* tindakan peribadi terhadap mereka.
C Mahkamah Rayuan bersidang semasa Rayuan 2014 dalam menjalankan tugas dan fungsi perlembagaannya iaitu responden kedua dan ketiga bersidang sebagai ahli panel bersama dengan ahli panel yang lain. Amat sukar untuk menerima pendirian yang diambil oleh perayu bahawa responden kedua dan ketiga tidak disaman dalam kapasiti rasmi mereka.

D **(3)** Responden pertama ditubuhkan bawah per.121(1A) Perlembagaan Persekutuan. Bidang kuasa Mahkamah Rayuan seperti yang dinyatakan dalam Akta Mahkamah Kehakiman 1964, antara lain, untuk menentukan rayuan-rayuan dari keputusan Mahkamah Tinggi dan bidang kuasa lain yang dikurniakan bawah undang-undang persekutuan.
E Responden disaman dalam kapasiti itu.

(4) Peguam Negara mempunyai tanggungjawab mandatori menyediakan perwakilan undang-undang untuk membela dan melindungi institusi pentadbiran keadilan negara ini. Sebagai pegawai yang ditubuhkan bawah Perlembagaan Persekutuan, Peguam Negara harus membela
F hakim-hakim yang disaman dalam menjalankan tugas mereka seperti dalam kes ini, dalam melindungi institusi keadilan dan dalam kepentingan pentadbiran keadilan.

(5) Perayu menghujahkan bahawa guaman bukanlah terhadap pegawai awam kerana responden kedua dan ketiga bukan pegawai awam
G berdasarkan fakta bahawa "Kerajaan Malaysia tidak mempunyai kuasa atau bidang kuasa untuk memecat mereka dan badan kehakiman juga tidak mempunyai kuasa atau bidang kuasa untuk memecat mereka: mereka hanya boleh dipecat oleh Parlimen." Responden kedua dan ketiga dilantik bawah per. 122B Perlembagaan Persekutuan oleh Yang
H di-Pertuan Agong. Responden-responden ini adalah hakim-hakim Mahkamah Rayuan. Peruntukan yang menyebut Parlimen dalam Bahagian IX Perlembagaan Persekutuan adalah per. 127, yang mengehadkan Parlimen daripada membincangkan tingkah laku hakim kecuali atas usul substantif iaitu notis berpatutan mesti diberikan. Oleh
I itu, Perlembagaan Persekutuan melarang Parlimen daripada

membincangkan tingkah laku hakim tanpa memenuhi keperluan per. 127 terlebih dahulu. Kenyataan perayu benar-benar tidak masuk akal dan bercanggah dengan teras utama kes perayu dalam menegakkan doktrin pengasingan kuasa. Oleh itu, kenyataan perayu bahawa Parlimen boleh memecat hakim bukan sahaja salah dari segi undang-undang tetapi juga bertentangan dengan hujahan asas yang ditimbulkan oleh perayu dalam membantah pewakilan oleh Peguam Negara dalam kes ini.

(6) Peguam Negara mewakili responden-responden bawah kuasa luasnya yang tersirat dalam per. 145 untuk menegakkan kesucian institusi keadilan. Kuasa luas Peguam Negara bawah per. 145 Perlembagaan Persekutuan semestinya termasuk kuasa untuk mewakili bukan hanya Kerajaan tetapi juga mana-mana perbadanan atau individu yang menjalankan fungsinya bawah Perlembagaan. Jelas ini adalah salah satu kes itu. Alasan-alasan yang dibangkitkan oleh perayu dalam rayuan ini adalah tanpa sebarang merit.

Case(s) referred to:

Indah Desa Saujana Corp Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor [2005] 4 CLJ 925 HC ***(refd)***

Tun Dato Hj Mohamed Salleh Abas v. Tan Sri Dato Abdul Hamid Omar & Ors [1988] 2 CLJ 739; [1988] 1 CLJ (Rep) 294 SC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 121(1A), 122B, 127, 145
Government Proceedings Act 1956, s. 24(2)
Rules of Court 2012, O. 18 r. 19, O. 73 r. 3

[Editor's note: Appeal from High Court, Miri; Civil Suit No: MYY-22NCVC-14/8-2015 (affirmed).]

For the appellant - Tai Choi Yu; M/s Tai Choi Yu & Co
For the respondents - Shamsul Bolhassan; SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Rohana Yusuf JCA:

[1] This is an appeal by the appellant against the decision of the High Court of Sabah and Sarawak in Miri made on 24 February 2016. The learned High Court Judge had dismissed the appellant's application to strike out the memorandum of appearance filed by the Senior Federal Counsel (SFC) of the Federal Attorney General's Chambers on behalf of all the respondents.

[2] The striking out application was made under O. 18 r. 19 of the Rules of Court 2012 and its inherent jurisdiction. The memorandum of appearance was filed by the learned SFC in relation to a civil action by the appellant herein Tai Choi Yu as plaintiff, against all the three respondents.

[3] The brief background facts leading to the application by the appellant are these. The appellant is a firm of solicitors. The first respondent is the Court of Appeal established under the Federal Constitution and the laws of Malaysia. The second respondent was the Chairman of the Court of Appeal Panel convened and presiding on 14 August 2014 and the third respondent was another member of the three presiding judges in that Court of Appeal panel hearing the Civil Appeal No. Q-02(IM)-188-01-2014 (the 2014 appeal).

[4] In the 2014 appeal, the appellant herein was also the appellant. The 2014 appeal was in pursuance of a civil action filed by the appellant as plaintiff in Miri High Court Suit No. MYY-22-15/7-2013 (the 2013 action) between Tai Choi Yu & Co. advocates against Ting Sie Chung @ Ting Sieh Chung. The said 2013 action was filed by the appellant seeking for a sum of RM995,517.49 being remuneration for legal work and services rendered. The defendant in the 2013 action filed a notice of application under O. 18 r. 19 of the Rules of Court 2012 to strike out the 2013 action. The learned High Court Judge dismissed the striking out application. The defendant in the 2013 action then appealed to the Court of Appeal in the 2014 appeal. On 14 August 2014, the Court of Appeal (first respondent) overturned the decision of the High Court and struck out the 2013 action.

[5] The appellant, however, maintained that the Court of Appeal should have ordered for the 2013 action be reinstated and be remitted back to the High Court for a hearing on its merits. The basis of the appellant's complaint was that the respondents had not provided him with written grounds of decision in deciding the 2014 appeal. The appellant said he wrote several letters dated 9 June 2015, 25 June 2015 and 23 July 2015 respectively requesting for the written grounds of decision. However, there was no reply. Despite no grounds of judgment being made available to him, the appellant being dissatisfied with the first respondent's order dated 14 August 2014 proceeded to apply for leave in order to lodge an appeal against that decision at the Federal Court. The leave application was dismissed on 21 May 2015. It was the appellant's contention that his failure in obtaining leave was contributed by the fact that there were no written grounds of decision from the first respondent to support the appellant's application for leave.

[6] As a result, the appellant filed a civil action in Civil Suit No. MYY-22NCVC-14/8-2015 at Miri High Court against the respondents. This civil suit was filed seeking the following reliefs, as stated at para. 24 of the statement of claim:

> (1) an order that the High Court Suit No. MYY-22-15/7-2013 be reinstated and to be reverted back to the High Court for hearing on its merits and on *quantum meruit* or on such terms as the High Court deems fit and just;

(2) a declaration that the said Order dated 14.08.2014 in the Court of Appeal Civil Appeal No. Q-02(IM)-188-01/2014 is a nullity, null and void or void *ab initio* on the ground that it is unlawful being a deprivation or denial of access to the Courts, illegal and against public policy and is *ultra vires* the Constitution, arbitrary and oppressive and a gross miscarriage of justice or in breach of the established elementary rules of natural justice and further, with no reason given and without the written Grounds of Decision;

(3) a declaration that the Second Defendant acted in bad faith or was reckless or did not in good faith believe that she had jurisdiction to grant the said Order with no reason or Grounds of Decision given or for her refusal and inability to furnish the Grounds of Decision;

(4) a declaration that the Third Defendant acted in bad faith or was reckless or did not in good faith believe that she had jurisdiction to grant the said Order with no reason or Grounds of Decision given or for her refusal or inability to furnish the Grounds of Decision;

(5) a declaration that the Second and Third Defendants are unfit to be judges on the grounds of bad faith, recklessness or absence of good faith and for their refusal to discharge their duties to give reasons or to furnish their reasoned Judgment for the said Order;

(6) such order reliefs as the Court deems just; and

(7) costs.

[7] The writ of summons was served on all the three respondents directly, addressed at the Istana Kehakiman Putrajaya and not served on the Attorney General's Chambers. The appellant said he did so in consonant with his stand that the action instituted by him is not a civil action against the Government and the Government Proceedings Act 1956 has no application. It was also for that reason that the service of the writ was not made pursuant to O. 73 r. 3 of the Rules of Court 2012.

[8] The SFC, despite the suit not being a suit against the Government had entered appearance and had filed a memorandum of appearance on behalf of all the three respondents on 17 August 2015. The appellant then *vide* High Court encl. 6 and pursuant to O. 18 r. 19 filed an application to:

(a) set aside the memorandum of appearance filed by the SFC; and

(b) set aside the purported representation of the respondents by the Federal Attorney General's Chambers.

[9] The application was premised on the grounds:

1. that the First Respondent is an independent arm established under the Federal Constitution on the principle of separation of powers of the legislative, the judiciary and the executive and therefore the representation by the Federal Attorney General's Chambers is unlawful, illegal and unconstitutional;

2. that the Second and Third Respondents are not public servants or public employees and they do not come under the cognisance of the Public Services Commission and the Rules and Regulations thereto;

3. the Second and Third Respondents hold office under contract in their personal capacities and are sued in their personal capacities and therefore they cannot be represented by the Federal Attorney General's Chambers;

4. the 2nd and 3rd Defendants are independent contractees and they do not come within the purview of the Federal Attorney General's Chambers;

5. being independent contractees, the Second and Third Respondents would be beholden or seen to be beholden to the executive arm of the Government of Malaysia if so represented and therefore the Second and Third Respondents' representation by the Federal Attorney General is a nullity, null and void and *ultra vires* the Constitution and not in accordance with the law.

6. Such other grounds as stated in the affidavit in support affirmed by Tai Choi Yu dated 09.09.2015.

[10] After hearing the application, the learned High Court Judge dismissed encl. 6 on 24 February 2016 with costs of RM3,000. This appeal is by the appellant against that decision.

Grounds Of Appeal

[11] The grounds of appeal as appeared in the memorandum of appeal mainly focused on the following issues:

(i) whether this Court of Appeal can hear this appeal;

(ii) whether the respondents can be represented by the Federal Counsel of the Federal Attorney General's Chambers; and

(iii) whether there is a need to file an affidavit in opposition in the circumstances of this appeal.

[12] The appellant, before submitting on the merits of the appeal, raised a preliminary issue before us that we, sitting on the panel of the Court of Appeal has no jurisdiction to sit and to hear this appeal. The appellant contended that the hearing of this appeal by us would tantamount to hearing an appeal against ourselves and thereby in breach of the established elementary rule of natural justice, *Nemo Judex in Causa Sua*, since the Court of Appeal is sued and named as a party.

[13] Our short answer to this issue was that it was the appellant himself who lodged the appeal to this court, and it is our constitutional duty to hear and decide on the appeal before us. The learned SFC in response to this preliminary issue had also pointed out that it was the appellant who lodged

the present appeal before us and in doing so had submitted himself to the jurisdiction of this court. Therefore, he could no longer raise issue questioning the jurisdiction of this court. We agreed with the learned SFC and we dismissed the preliminary issue raised and proceeded to hear the appellant's appeal on its merits.

[14] Before we proceeded to deliberate on the issues raised in this appeal, we noted that the third ground which was raised, that is on the need to file any affidavit, was not being canvassed before us by the appellant. Neither was this issue addressed in his written submissions. We therefore took the view that the appellant was no longer interested in pursuing this ground of appeal. We also found that the learned High Court Judge had, in his grounds of judgment dealt with this issue at great length, of which we agreed.

[15] The essence of the appeal before us, relates to the capacity and the authority of the SFC in representing the respondents in the civil action by the appellant. Up to then, the SFC had entered appearance and had filed the memorandum of appearance on behalf of the respondents. The appellant submitted that the representation by SFC would lead to a situation of conflict of interest and would undermine the independence of the judiciary if not real, at least on account of public perception. Furthermore, according to the appellant, the subject matter of the suit against the second respondent and the third respondent is made in their respective personal names and not to be taken as a suit against the Government *a fortiori* the Attorney General has no *locus* to represent the respondents herein.

[16] We would begin our discussions firstly, by examining the nature of the action filed by the appellant. Having perused through the statement of claim, we found it amply clear that the civil action herein is a civil action by the appellant made against the respondents and it pertains to the respondents' discharge of their duties and functions as the Court of Appeal, where the second respondent and third respondent sat as the adjudicating members. The fact that the second respondent and the third respondent are named in their personal names does not *ipso facto* make it a personal action against them.

[17] On the date in question, the Court of Appeal presided over the 2014 Appeal in the course of its constitutional duties and functions, where the second respondent and the third respondent were sitting as the panel members together with another panel member. We found it difficult to appreciate the stand taken by the appellant that the second respondent and the third respondent were not sued in their official capacities but in their personal names. It was not made clear by the appellant though, whether the appellant intended that to mean that the suit is a private and personal suit against the two respondents instead. And if so, how can a suit be treated as a personal suit bearing in mind that the allegation against the respondents

were all matters that relate to, or in the course of them discharging their constitutional duties. This is further borne out by the pleadings of the appellant at para. 2 of the statement of claim, which describes the first respondent as the Court of Appeal and the other two respondents were the presiding judges who made the impugned order.

[18] The first respondent, the Court of Appeal, is constituted under art. 121(1A) of the Federal Constitution. The jurisdiction of the Court of Appeal as stated in the Courts of Judicature Act 1964 amongst others, is to determine appeals from decisions of the High Court and such other jurisdiction conferred under Federal laws. It is in that capacity too that the first respondent is being sued.

[19] Having established that position, we next proceeded to examine the constitutional functions and duties of the Attorney General. The starting point would be art. 145 of the Federal Constitution. Article 145 defines the Constitutional duties of the Attorney General in broad general terms. The Supreme Court in *Tun Dato Hj Mohamed Salleh bin Abas v. Tan Sri Dato Abdul Hamid Omar & Ors* [1988] 2 CLJ 739; [1988] 1 CLJ (Rep) 294; [1988] 3 MLJ 149 in dealing with this article held that "Article 145 of the Constitution properly read gives ample power to the Attorney General to represent the Government and any body or person performing any function under the Constitution."

[20] The capacity of the Attorney General to represent a judge being sued in the course of administering and discharging his judicial functions had earlier been deliberated by this court in *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen & Anor* [2005] 4 CLJ 925; [2008] 2 MLJ 11. In that case, a legal suit was filed against a judge of the High Court. There was an application to prevent the Attorney General or his officers from acting for the judge which was dismissed. Having found that the judge was sued as a judge of the High Court and not in a personal or private capacity, the Attorney General was held to be duty bound and was under a mandatory duty to provide legal representation in order to defend and protect the office and the institution for the administration of justice in this country. The Court of Appeal in that case further added that, in the absence of any factual or legal impediment, the Attorney General and his officer are legally bound to represent a judge in a legal suit.

[21] We would echo a similar sentiment and we agree with the decision of this court in *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor (supra)* that the Attorney General, being an officer established under the Federal Constitution, must step in defence of judges sued in the course of performing their duties as in this case, in the protection of the institution of the Judiciary and in the interest of administration of justice.

[22] We have given our consideration to the submission of the appellant in pressing the issue that s. 24 of the Government Proceedings Act 1956 cannot be relied upon to justify the representation of the respondents by the Attorney General. For one thing the suit is not a suit against the Government. It is also not a proceeding that entitles the Attorney General to act under s. 24(2) because the respondents are not public officers and no certification in writing was shown by the Attorney General that this is a public interest litigation pursuant to s. 24(2).

[23] We were in agreement with the appellant therefore that s. 24 would have no application here. The suggestion by the appellant that s. 24(2) can only be invoked upon certification in writing by the Attorney General too is of no application because by the appellant's own argument the suit filed by him is not even one against a public officer to begin with. As we have alluded to earlier, the representation by the Attorney General here is pursuant to his wide powers under art. 145 of the Federal Constitution.

[24] Before we end our discussion, we are compelled to deal with the approach taken by the appellant in submitting that the suit is not one against a public officer. The appellant in his own submission before us as well as in his written submissions had stated that the second respondent and third respondent are not public officers by virtue of the fact that the "Government of Malaysia has no power or jurisdiction to sack them and the Judiciary also has no power and jurisdiction to sack them: they can only be sacked by Parliament" (emphasis added).

[25] We must say the appellant had an interesting way of defining public officer or rather in defining why the second respondent and third respondent are not public officers. In our view the simplest way to define who these respondents are, would be by referring to Part IX of the Federal Constitution. The second respondent and the third respondent are appointed under art. 122B by the Yang di-Pertuan Agong. These respondents are judges of the Court of Appeal. In that same Part IX there are provisions that deal with tenure of office of judges, in particular art. 125. This article also lays down the process for removal of judges, which is through a tribunal constituted pursuant to art. 125. There is no involvement of Parliament according to this Part of the Constitution to give it any semblance of power for the removal of judges as submitted by the appellant. The only provision that says anything about Parliament in Part IX is that of art. 127. Article 127 restricts Parliament from discussing the conduct of a judge except on a substantive motion of which proper notice must be given to the House. Hence far from empowering the removal of judges, the Federal Constitution prohibits Parliament from simply discussing the conduct of a judge without first fulfilling the requirement of art. 127. Thus not only the statement made by the appellant is totally absurd but it goes against the main thrust of the appellant's case in upholding the doctrine of separation of powers.

[26] It had been the core contention of the appellant that the SFC cannot represent the respondents in order to maintain the independence of the Judiciary and to observe the doctrine of the separation of powers. To suggest that Parliament has the authority to remove a judge would be a total defiance of that same doctrine. Thus, the averment by the appellant that Parliament can remove a judge would not only be wrong in law but it would also go against the bone of contention propounded by the appellant in objecting to the representation by the Attorney General in this case.

[27] In the final analysis, we found the grounds raised by the appellant in this appeal are devoid of any merit. The Attorney General is representing the respondents under his wide ranging powers embedded in art. 145 to uphold the sanctity of the institution of justice. The decision of the Supreme Court in *Tun Dato Haji Mohamed Salleh bin Abas v. Tan Sri Dato Abdul Hamid bin Omar & Ors (supra)* remains a good law which binds us. We were further impelled to the view that the wide ranging powers of the Attorney General under art. 145 of the Federal Constitution necessarily includes the power to represent not only the Government but also any body or person performing any function under the Constitution. Clearly, this is one of such case.

[28] In the result, we dismissed the appellant's appeal with costs of RM5,000 with deposit refunded to the appellant. Both my learned brother Idrus Harun JCA and my learned sister Mary Lim Thiam Suan JCA had read this judgment in draft and concurred with the same.